

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**KELLY R NICHOLSON**  
Claimant

**APPEAL NO. 11A-UI-07373-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LAPORTE RD DQ INC**  
Employer

**OC: 05/08/11**  
**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated June 1, 2011, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 27, 2011. Claimant participated. Employer participated by Ron Hellman, store manager Charles City. Jessica Eppley was a witness for the employer. The record consists of the testimony of Kelly Nicholson; the testimony of Ron Hellman; and the testimony of Jessica Eppley.

**ISSUE:**

Whether the claimant voluntarily left for good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a Dairy Queen restaurant located in Charles City, Iowa. The claimant had worked at this restaurant for approximately seventeen years. Ron Hellman and his family took ownership of the restaurant approximately three years ago. The claimant was a part-time cashier. Her last day of work was May 9, 2011.

The night before, a freezer in the restaurant had malfunctioned. Mr. Hellman and a repair person were there and the claimant asked whether the burgers were going to be all right. Customers could hear her say this. Mr. Hellman told the claimant that the burgers were fine but she could not make comments like this where customers could hear. The claimant made the comment "screw you" and Mr. Hellman then told the claimant that she could not talk to him like that. The claimant got up and left. She never returned to work. Work was available for the claimant.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The issue in this case is the nature of the separation of employment. Mr. Hellman testified that the claimant abandoned her job and that he did not terminate her. The claimant testified that Mr. Hellman told her that he “fucking didn’t need her” and that she was terminated. Another employee, Jessica Eppley, was working when these events took place. Ms. Eppley testified that that she did not hear Mr. Hellman terminate the claimant and that she did not hear him use profanity. She also testified that he did not use profanity with his employees. He told her that the claimant had quit but he did not take it too seriously, since the claimant had done this in the past.

The greater weight of the evidence is that it was the claimant who initiated the separation of employment. She took offense at her employer's criticism and walked off the job. She, in effect, abandoned her employment. There is insufficient evidence in this record to conclude that she did so for good cause attributable to the employer. Since the claimant voluntarily left without good cause attributable to the employer, benefits are denied.

## DECISION:

The representative’s decision dated June 1, 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw